IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRP.No. 933 of 2002(E)

EP.238/98 & EA.605/98 IN LAR.60/1988 of PRL.SUB COURT,IRINJALAKUDA

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REVN. PETITIONERS: DECREE HOLDERS

DR.V.A.BABU (DIED)
LEGAL REPRESENTATIVES.

1. JESSY BABU, W/O.LATE BABU, AGED 46 YEARS,
VELLANIKKARAN HOUSE, KOTHAMANGALAM, ERNAKULAM.

2. LISS BABU S/O. DO.

3. MINOR TOM BABU, S/O. DO. DO. REPRESENTED
BY NEXT FRIEND AND MOTHER 1ST PETITIONER
JESSY BABU.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS: JUDGMENT DEBTORS

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1. STATE OF KERALA REPRESENTED BY DISTRICT
COLLECTOR, THRISSUR.

2. POST & TELEGRAPH DEPARTMENT REPRESENTED
BY SUPERINTENDENT OF POST OFFICES, IRINJALAKUDA
DIVISION, THRISSUR DT.

3. M.V.AYYAPPANKUTTY,S/O.VELAYUDHAN,
MUNDANPARAMBIL VEEDU,PUDUMANA,KOMBANADU,
ERNAKULLAM DT.

4. JOY KURIAKOSE,S/O. KURIAKOSE,
KARIPPARA HOUSE, KATHIPARKAKKARA, VELLATHUVAL,
IDUKKI DT.

R1 BY GOVT.PLEADER MR.SHYSON P.MANGUZHA
R3 BY ADV. SRI.V.K.ISSAC
SRI.ISAC SANJAY
R4 BY ADV. SRI.M.S.NARAYANAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 7.9.2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NOS.2428/02, 144/06 & 1624/06

CLOSED

7.9.2007 SD/-PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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C.R.P.No.933 OF 2002

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DATED THIS THE 7TH SEPTEMBER, 2007

O R D E R

This Civil Revision Petition is also directed against the common order which is impugned in C.R.P.No.948 of 2002. I have today, by a separate detailed order, disposed of C.R.P.No.948 of 2002. That order answers the grounds raised in this revision petition also. In view of the order in C.R.P.No.948 of 2002, this Civil Revision Petition is disposed of without any order as to costs.

(PIUS C.KURIAKOSE, JUDGE)

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PIUS C.KURIAKOSE, J.

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C.R.P.NO.933 OF 2002

O R D E R

7TH SEPTEMBER, 2007.

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2. After evaluating the evidence, the execution court found that Ext.B2 agreement executed by late Dr.Babu in favour of Ayyappankutty was an equitable assignment of Dr.Babu's right to execute the award of the land acquisition court and on that finding held that neither Dr.Babu nor his legal heirs are entitled to execute the decree and accordingly dismissed E.P.238 of 1998. The contention advanced by the legal heirs of Dr.Babu that E.A.605 of 1998 had abated due to deliberate non-impleadment of them was ignored by the court below which went on to allow E.A.No.605 of 1998 thereby directing release of the entire amount under deposit to Sri.Ayyappankutty.

3. I have heard the submissions of Mr.Ranjith Thampan, learned counsel for the petitioners in C.R.P.No.948 of 2002, Sri.N.Subramaniam, counsel for Joy Kuriakose who was the petitioner in C.R.P.No.836 of 2002 and 874 of 2002 and also Sri.V.K.Isaac, learned counsel for Ayyappankutty. I have also heard the submissions of Sri.Shyson P.Manguzha, learned Government Pleader on behalf of the State.

4. Sri.Ranjith Thampan would submit that E.A.605 of 1998 filed by Ayyappankutty arraying late Dr.Babu as the party-respondent had

become abated as against the legal heirs of Dr.Babu due to deliberate non-impleadment of them. Yet the execution court has proceeded to allow E.A.605 of 1998 with Dr.Babu on the array of parties, a circumstance which vitiates the order in that E.A. The learned counsel submitted that Ayyappankutty did not have a plea of equitable assignment of all the rights of Dr.Babu in the decree to him. Nevertheless, the execution court went beyond the scope of its jurisdiction to uphold such a plea on the basis of certain inapposite judicial precedents which were cited before him on behalf of Ayyappankutty. The power of attorney Ext.B1 was revoked by Dr.Babu himself during his lifetime and at any rate the power of attorney could not survive Dr.Babu who passed away during the pendency of the E.P. filed by him. No agency can survive the principal, submitted the learned counsel. Description of a power of attorney as irrevocable will not render the power of attorney irrevocable unless the power conferred is coupled with any interest which the agent had in the subject-matter. The entire transaction between the parties is void being violative of Section 6(e) of the Transfer of Property Act and also Section 53 of the Contract Act. The total compensation is more than Rs.53 lakhs and the transaction discernible from Exts.B1 and B2 relied

on by Ayyappan is an agreement to share the compensation in the ratio Rs.9 lakhs: the entire balance, between the decree-holder Dr.Babu and Ayyappankutty, the agent. The agreement is champertous and hence illegal. The agreement at any rate is unconscionable and unenforceable due to that reason. Ext.B1 power of attorney and Ext.B2 agreement relied on by Ayyappankutty and approved by the court are not admissible in evidence in view of Section 17 of the Registration Act read with Section 49 of the same Act. Even according to the testimony of Ayyappankutty, he was a proxi for the Presiding Officer concerned. His testimony was that he does not know English, that he and the Presiding Officer concerned are fellow-villagers, that the Presiding Officer concerned was instrumental for execution of Exts.B1 and B2 in his favour and that corrections have been made in Ext.B1 power of attorney by the Presiding Officer under his own handwriting. These admissions coming from the mouth of Ayyappankutty himself and the circumstance noticeable from the amterials available in the records relating to the previous execution petitions as well as the originals of the records of the land acquisition reference case will establish to the very hilt that Exts.B1 and B2

were byproducts of sheer abuse of legal process and perpetration of fraud not only on the petitioner but also on the judicial system itself. Any claim based on Exts.B1 and B2 was to be repelled on the short score that out of the per se illegal transaction, legitimate claims can never originate. Sri.Renjith in his submissions drew my attention to Section 6(e) of the Transfer of Property Act, 1882 and 201 of the Indian Contract Act, 1872 as well as to Sections 17 and 49 of the Registration Act, 1908. The learned counsel would endeavour to distinguish the decisions relied on by the court below on the facts which obtain in this case and would refer to all those decisions, referring in particular to **Joseph George v. Cochin Sanitary Wares** (1991 (2) KLT 447). Mr.Ranjith also referred to the judgment of the Bombay High Court in **In re K.L.Gauba** (AIR 1954 Bombay 478) and the judgments in **Kamrunnisa v. Pramod Kumar Gupta** (AIR 1997 Madhya Pradesh 106) and **N.Venkataswami v. K.Nagi Reddy** (AIR 1962 Andhra Pradesh 457). Though English Law of Champerty and Maintenance may not as such be applicable in India, the present one being a case involving an advocate and a judicial officer, Ext.B2 agreement has to be found illegal and hence liable to be ignored, submitted counsel.

5. Sri.N.Subramaniam, learned counsel for Mr.Joy Kuriakose was permitted to address arguments in support of the grounds raised in C.R.P.Nos.836 and 874 of 2002. The learned counsel submitted that the court below had declined any relief to Joy Kuriakose on the reason that he did not adduce any evidence in support of his claim based on his subsequent agreement with Ayyappankutty. The agreement between Ayyappankutty and Joy Kuriakose has been produced in the execution proceedings. E.P.108 of 1999 had been filed by Joy Kuriakose on the basis of that agreement. The stamped receipt issued by Ayyappankutty for receiving Rs.One lakh from Joy Kuriakose had also been produced. Ayyappankutty denied execution of these documents and his signature in both. The original of the agreement between Dr.Babu and Ayyappankutty, the receipt dated 24.7.1995 from Dr.Babu to Ayyappankutty, the further power of attorney executed by Dr.Babu in favour of Ayyappankutty dated 24.7.1995 regarding payment of tax due on the compensation amount were all produced by Joy Kuriakose only. The receipt for Rs.One lakh was issued by Ayyappankutty in his own handwriting. E.P.108 of 1999 was not enquired into since the same was not pressed on technical reasons. Thereafter, Joy Kuriakose filed E.P.199 of 1999.

To that E.P. also Ayyappankutty filed detailed objections reiterating his earlier contentions.

The word “champerty” has its origin in the French word “champs parti” meaning “split field”. Black's Law Dictionary would define champerty as an agreement between an officious inter-meddler in a law suit and a litigant by which the intermeddler helps pursue the litigant's claim as consideration for receiving part of any judgment proceeds. To be more specific, champerty and maintenance means an agreement between the claimant in a litigation and a party unrelated to the litigation under which the unrelated party agrees to maintain and support the litigation on condition that the fruits of the litigation will be shared between them. In England, champerty and champertous agreement are illegal. But in India, an agreement between a party to the litigation and between another person who is not a party to the litigation to share fruits of the litigation does not become illegal for the sole reason that the agreement is champertous. At the same time, if it is revealed that the object of the agreement is illegal or if the conditions of the agreement are violative of the principles of equity, justice and good conscience or the agreement discloses an unconscionable bargain, then, the courts in India will certainly find the champertous agreement to be illegal and refuse to enforce the same.

A Division Bench of this Court consisting of M.S.Menon, J. (as His Lordship then was) and T.K.Joseph, J. considered the question as to whether Champerty agreements are illegal in India and also whether rules of English law against Champerty and maintenance apply in India in considerable detail. Following the judgment of the Supreme Court in AIR 1954 S.C. 557 their Lordships held that if no Advocates are involved in the agreement, the agreement does not become illegal or enforcible in India for the only reason that the same is Champerty. The agreement which was considered by the Supreme Court in AIR 1954 S.C. 557 was an agreement between an Advocate and a litigating claimant under which it was agreed that the entire litigation will be financed and conducted by the Advocate without claiming any charges in advance but once the fruits of the litigation are realised, the Advocate will be given 50% of the same. The Supreme Court did not enforce the agreement noticing that an advocate was involved. While refusing to enforce that agreement that the agreement was between the claimant and the somebody who was not an Advocate, then the agreement would have been upheld and enforced. The Champerty agreement which was considered by the Division Bench consisting of M.S.Menon and T.K.Moseph, JJ. (Damodar Kilikar & Others v. Oosman

Abdul Gani [1961 KLJ 356]) did not have the junction of any Advocate. Noticing that fact and finding that the agreement was not immoral or opposed to public policy and that the terms of the agreement are not unjust or shocking to the conscience, the Division Bench upheld the agreement. But the distinction between the law in England and the Indian law regarding Champerty agreements is that while in England Champerty agreements, whoever the parties to the same are, are per se illegal in India such agreements become per se illegal only if Advocates are involved. It was submitted incidentally before me by all the counsel appearing in this case that a practice of claimants and Advocates entering into agreements of Champerty and maintenance is invoked in several parts of the State regarding conduct of compensation claims such as M.A.C.T.Compensation, Land Acquisition Compensation and Workmen's Compensation. However, having regard to the law in India relating to the Champerty agreements, any agreement between a lawyer and a client for payment of the fruits of an award or decree or payment of a portion of the fruits of an award or a decree as consideration for the lawyers financing the litigation or conducting the litigation by way of Advocate fees or other charges will be found illegal and will not be enforced in

any court. At the same time it should be pointed out that there is nothing illegal in an Advocate entering into an agreement with the client for payment of Advocate fees which is not dependent or contingent on the result of the litigation, even if the fees so agreed upon is in excess of the fees prescribed under the Rules relating to payment of Advocate Fees. In other words, there is no illegality in the Advocate and the party agreeing to pay or receive a fees higher or lesser than the fees prescribed by the Advocate Fees Rules. The relevance of Advocate Fees Rules, 1969 is only that the same provides the maximum fee recoverable from the opposite side as part of the case in the event of the claim being upheld.

I am obliged to refer now to a very serious argument which was addressed before me by Adv.Mr.Ranjith Thampan. Mr.Ranjith Thampan submitted that Ext.B2 is per se a Champerty agreement and that though it does not have the junction or involvement of an Advocate, the same is vitiated due to involvement of a judicial official. Mr.Ranjith Thampan would highlight before me various aspects which according to the learned counsel establishes the involvement of the officer who presided over the land acquisition reference court at the time when the decree was passed by this court. It is not necessary for me to find out

one way or other as to whether Exts.B1 and B2 has involvement of any judicial officer since I have already found Exts.B1 and B2 to be illegal on other reasons.

Section 6 of the Advocates Act, 1961 lays down the functions of

the State Bar Councils which includes entertainment and determination of cases of misconduct against advocates on its roll—the judgment of the Supreme Court in C.Ravichandran Iyer v. A.M.Bhattacharjee [(1995) 5 SCC 457] lays down that the Bar Council is duty bound to maintain ethical and professional standards among lawyers.

By virtue of its rule-making powers conferred under the Advocates Act, 1961 the Bar Council of India Rules, 1975 have been framed by the Bar Council of India (General power of the Bar Council of India to make Rules under Section 49 – Section 49(1)(c) deals with power to make rules regarding the standards of professional conduct and etiquette to be observed by advocates). Part VI of Bar Council of India Rules, 1975 contains rules governing advocates and Chapter II provides for standards of professional conduct and etiquette. Section I of this Chapter lays down the duty to the Court. Clause 3 therein provides that an advocate shall not influence the decision of a Court by any illegal or improper means. Private communications with a Judge relating to a pending case are forbidden. Clause 4 provides that an advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate

himself ought not to do. Section II provides for the duty to client and Clause 20 therein is as follows:-

"An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof."

The oath which is sworn to by a judicial officer when he assumes reads as follows:-

" I ..... do swear that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, and that I will carry out the duties of my office loyally, honestly and with impartiality."

Whether a transaction is unconscionable or not will depend on the facts of each case. A transaction may be unconscionable in many ways and the court should see in each case according to its sense of justice if it is really so. Section 19 of the Contract Act deals with voidable agreements and the same provides that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Section 24 of the Contract Act says: "Agreements void, if considerations and objects unlawful in part—If

any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void." Section 25 provides that agreement without consideration is void unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. Section 26 says that agreement in restraint of marriage is void and Section 27 says that agreement in restraint of trade is void. Section 28 provides that agreement in restraint of legal proceedings is void. Section 29 provides for agreements void for uncertainty (agreements, the meaning of which is not certain, or capable of being made certain are void). Section 30 provides that the agreements by way of wager are void. The most important Section is perhaps Section 23 which reads as follows:-

"23. What considerations and objects are lawful and what not.-- The consideration or object of an agreement is lawful, unless--

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another, or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

An agreement between two persons to commit fraud on a third party is void.

Public Policy

Rules of public policy do not belong to a fixed or customary law. They are capable on proper occasions of expansion and modification. The question whether a contract is opposed to public policy or not is to be decided on general principles only and not by consideration of the terms of a particular contract. The doctrine of public policy should be invoked only in clear and uncontestable cases of harm to public interest (1976 KLT 448).

The term "public policy' does not admit of any definition. It is equivalent to the policy of law. Whatever tends to injustice of operation, restraint of liberty, commerce and natrual or legal right; whatever tends to the obstruction of justice or to the violation of a statute and whatever is against the good morals when made the object

of a contract is against a public policy and therefore void (AIR 1964 AP 465)

AIR 1959 SC 781